

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM  
ELECTRIC UTILITIES**

**EXECUTIVE SUMMARY:**

The Department is proposing to create a new Chapter, Oklahoma Administrative Code (OAC) 252:517 (Disposal of Coal Combustion Residuals from Electric Utilities). The Department is proposing OAC 252:517 in response to the United States Environmental Protection Agency (EPA) promulgating 40 CFR Part 257, Subpart D, which prescribes new requirements pertaining to the disposal of coal combustion residuals (CCR) generated from the combustion of coal at electric utilities and independent power producers. DEQ has incorporated the requirements of 40 CFR Part 257, Subpart D in its entirety and inserted, where appropriate, pertinent language to enable DEQ to permit CCR facilities and enforce the new Chapter.

DEQ is proposing to exclude solid waste disposal facilities used exclusively for disposal of CCR, or coal ash, from applicability under OAC 252:515 (Management of Solid Waste). Therefore, it is proposed that the provisions within OAC 252:515 currently applicable to CCR facilities will no longer apply, and those facilities will be regulated under the new OAC 252:517.

**DIFFERENCES FROM ANALOGOUS FEDERAL RULES:**

As described in the Executive Summary, the Department is proposing OAC 252:517 in response to EPA's new final CCR rules found in 40 CFR Part 257, Subpart D. In drafting OAC 252:517, the Department included Subpart D in its entirety and inserted, where appropriate, pertinent language to enable DEQ to permit CCR facilities and administer the new Chapter.

In order to allow the Department to oversee the federal CCR requirements in the context of a state permitting program, and in order to ensure consistency in solid waste regulation within the State, the Department made a few minor, non-substantive changes to the federal rules and included provisions from OAC 252:515. The revisions and inclusions include: The removal of statements regarding national applicability; the inclusion of language to require submittal and approval of plans to DEQ; the inclusion of permitting provisions to allow the Department to administer the CCR rules in the context of a permitting program; the inclusion of state-specific location restrictions; the inclusion of procedures for subsurface investigation; the inclusion of provisions addressing cost estimates and financial assurance. The additional provisions described above were taken from OAC 252:515 and were included to ensure consistency in state solid waste regulation and to satisfy state statutory requirements. Additionally, all CCR landfills within Oklahoma are already subject to the inclusions borrowed from OAC 252:515.

**ENVIRONMENTAL BENEFIT STATEMENT:**

Please see the attached Economic Impact and Environmental Benefit Statement.

**SUMMARY OF COMMENTS AND RESPONSES:**

Please see the attached Response to Comments.

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**ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT STATEMENT**

**MORE STRINGENT RULES:** OAC 252:517-5-6, OAC 252:517-5-7, OAC 252:517-5-10, and OAC 252:517-5-11.

The proposed rulemaking is more stringent than its corresponding federal rule and current state rules in the following way:

The above-listed provisions impose more stringent location restrictions than are included in the corresponding federal rule, 40 CFR Part 257, Subpart D. All of the above-listed provisions are location restrictions found in OAC 252:515 and apply to all applicable disposal facilities, including CCR landfills. Due to the creation of a new Chapter, OAC 252:517, specific to CCR disposal units including both landfills and impoundments, the location restrictions currently included in OAC 252:515 for landfills are being included in OAC 252:517 and will now apply to CCR landfills and new surface impoundments.

CCR surface impoundments will now be regulated under the Oklahoma Solid Waste Management Act as “disposal sites”. Any CCR surface impoundments with outfalls will remain subject to all applicable Oklahoma Pollutant Discharge Elimination System requirements.

**RATIONALE:** The reason for the more stringent rules is as follows:

The additional requirements listed above are imposed for purposes of allowing DEQ to implement and oversee a comprehensive and consistent environmental regulatory framework for all CCR disposal units, both landfills and surface impoundments. The requirements listed above were taken from OAC 252:515 and all currently apply to CCR landfills.

The environmental concern that necessitates location restriction provisions in the rules is present irrespective of the type of disposal unit. The concern over potential release of CCR to the environment, including surface and groundwater, exists when disposing CCR in an impoundment just as it does when disposing CCR in a landfill.

**ENVIRONMENTAL BENEFIT:**

The additional requirements will provide an added measure of protection to officially designated scenic rivers, recreation and preservation areas, public water supply and wellhead protection areas, from the potential release of CCR from disposal units that otherwise would not be provided. The added protection is accomplished by mandating minimum separation distances between CCR impoundments and the potentially impacted resources described above.

**ECONOMIC IMPACT:**

Complying with the location restrictions may have potential economic impact since it limits the number of suitable locations for disposal units and alternative locations must be used. The impact is anticipated to be small as most CCR disposal units are located in close proximity to the source of generation most of which is away from the unique resources for which location restrictions have been prescribed.

**THIS ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT STATEMENT WAS  
PREPARED ON:** December 14, 2015.

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**Response to Comments**

Response to comments received from Stephen L. Jantzen of Ryan Whaley Coldiron Jantzen Peters & Webber on behalf of Western Farmers Electric Cooperative, received on January 13, 2016.

**Comment:** Indian Country/Indian Lands/Indian Tribe. It is noted that ODEQ's proposed OAC 252:517 does not contain an independent definition of *Indian Country*, *Indian lands*, or *Indian Tribe*, nor does the rule clearly adopt the Federal definition or an approach concerning *Indian Country*, *Indian Lands*, and *Indian Tribes*. Leaving this issue unaddressed creates unclarity and potentially inconsistent obligations between the Federal and proposed ODEQ approaches.

**Response:** None of the included terms (*Indian Country*, *Indian Lands*, *Indian Tribe*) are used within the proposed rules. As with all other solid waste related issues, DEQ will perform an internal jurisdictional determination. If the unit is proposed on land held in Trust by the United States for the benefit of an Indian Tribe, the unit/land is outside DEQ jurisdiction and DEQ will only regulate the unit with the request and consent of the tribe or BIA. All other types of properties will be subject to the proposed rules and regulated by DEQ. No changes are proposed.

**Comment:** Use of the term "Waste." In numerous locations throughout proposed OAC 252:517, use of the term "waste" is inappropriate. A more appropriate approach would be to substitute "CCR" for "waste." Examples are: (1) the proposed definition of "freeboard;" (2) the proposed definition of "free liquids;" (3) proposed OAC 252:517-3-42(c)(10); and (4) proposed OAC 252:517-5-9(a). CCR may be managed/stored on a temporary basis in a CCR unit before beneficial reuse, thus use of the term "waste" is not always appropriate. The entire text of proposed OAC 252:517 should be reviewed and modified accordingly.

**Response:** The majority of the referenced uses of the term "waste" above within OAC 252:517 are verbatim to 40 CFR Part 257, Subpart D. Furthermore, beneficial reuse takes the CCR outside the scope of the proposed rules and removes it from the category of "waste." The classification of the CCR while within a unit, and while subject to the proposed rules is considered a "waste". It is appropriate to call the CCR a waste up to the point it is beneficially reused and therefore removed from the scope of the rules. No changes are proposed.

**Comment:** Existing CCR Impoundment Permit Renewal. Proposed OAC 252:517-1-7 requires that existing CCR impoundments be permitted upon expiration of an existing permit or October 19, 2018. However, the permit application/permitting scheme for existing CCR impoundments (that are not expanding) is unclear in the proposed rules. What are the mechanisms, required

permit application information, and applicable proposed rule provisions for existing CCR impoundments under the proposed rules?

**Response:** The permitting of an existing impoundment should follow the provisions and process set out in OAC 252:517, Subchapter 3. An existing impoundment, while not new, will require a new solid waste permit and therefore all information otherwise required for a new unit application. DEQ has proposed revisions to OAC 252:517-3-3(b) and 517-3-6(a) to clarify the scope to expressly include new solid waste permits for existing impoundments. The proposed changes were voted on and approved by the Solid Waste Management Advisory Council.

**Comment:** Aesthetic Enhancement (proposed OAC 252:517-3-7). Requirements to enhance the aesthetics of a CCR unit or related area are outside the scope and authority of RCRA. Further, as proposed, such requirements are vague and set forth no objective criteria or standards by which an application for a new permit or expanded boundary will be judged.

**Response:** OAC 252:517-3-7 was taken directly from OAC 252:515-3-37 as a required component of a solid waste permit application. Current CCR landfills are already subject to the requirement and it was included in Chapter 517 to maintain consistency across the solid waste program. No changes are proposed.

**Comment:** Quadrangle Topographic Map. Use of the term “surface variations” in proposed OAC 252:517-3-34 is vague and ambiguous. Consideration should be given to modifying this term to “surface elevation variations,” “topographic surface variations,” etc.

**Response:** OAC 252:517-3-34 was taken directly from OAC 252:515-3-54 as a required component of a solid waste permit application. There have been no issues with interpretation to date and current CCR landfills are already subject to this requirement. No changes are proposed.

**Comment:** Location Restrictions. Location restriction requirements set forth in proposed OAC 252:517-5-10 (Public Water Supply) and OAC 252:517-5-11 (Wellhead Protection Area), as they relate to public water supply wells are confusing. A one year travel time requirement versus a two mile threshold for public water supply wells creates unclarity. These requirements and the interplay of the two proposed location restrictions relating to public water supply wells need to be considered.

**Response:** The difference between the two provisions is that OAC 252:517-5-10 forbids construction of new or lateral expansions of CCR units if located within a one year time of travel of a public water supply well, while OAC 252:517-5-11 simply requires that a wellhead protection area be identified if the same activity occurs within two miles of a public water supply well. The two requirements are distinct and should be addressed separately. Both location restrictions were taken from Chapter 515, currently apply to CCR landfills, and were included in Chapter 517 to maintain program consistency. No changes are proposed.

**Comment:** Groundwater Study (proposed OAC 252:517, Part 5). The term “uppermost saturated zone” is used (proposed OAC 252:517-7-52). Another term – shall saturated zone” (proposed OAC 252:517-7-56) is used elsewhere. What is the correlation, if any, between these terms and the “uppermost aquifer”?

**Response:** In the context of OAC 252:517-7-52, the uppermost saturated zone is where the applicant anticipates reaching groundwater prior to the initiation of drilling. OAC 252:517-7-56 discusses a shallow saturated zone, which is a saturated zone that is encountered above the depth where groundwater was originally anticipated, and sets out instructions for how to address this scenario. Following the subsurface investigation, it could be determined that one of the aforementioned zones is the uppermost aquifer. These provisions also came from Chapter 515. No changes are proposed.